APPENDIX INDEX

Appendix A: Seventh Circuit Order of Affirmance (Oct. 9, 2009) 1a

Appendix B: Seventh Circuit Order denying a recall of the mandate in Case No. 06-1310 (Sep. 16, 2009) 6a

Appendix C: District Court Judgment, Case No. 08-0032, on jury verdict (Oct. 23, 2008) 9a

Appendix D: District Court Order, Case No. 08-0032 (May 21, 2008) 11a

Appendix E: Eastern District of Wisconsin Decision and Order, Case No. 04-C-343 (Dec. 27, 2005) 24a

Appendix F: Eastern District of Wisconsin Order, Case No. 04-C-343, Summary Judgment (Nov. 29, 2004) 32a

Appendix G: Seventh Circuit Order denying Rehearing and Rehearing en banc (Dec. 15, 2009) 40a

Appendix H: Western District of Wisconsin Order, Case No. 07-C-318-C, severing the case into 9 different cases (Dec. 28, 2007) 42a

Appendix I: Letter to Clerk's Office from Shaheed Madyun, dated Dec. 1, 2009 ..... 54a

Appendix J: Letter to Shaheed T'aalib'din Madyun from Pro Se Clerk, Seventh Circuit, dated Dec. 12, 2009 ..... 56a

APPENDIX A

NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with
Fed. R. App. P. 32.1

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

No. 08-4003

**[Submitted October 8, 2009*
Decided October 9, 2009]**

SHAHEED TAALIB'DIN MADYUN,
Plaintiff-Appellant,

v.

KIRBY LINJER,
Defendant-Appellee.

Before

FRANK H. EASTERBROOK, *Chief Judge*
RICHARD A. POSNER, *Circuit Judge*

* After examining the briefs and the record, we have concluded that oral argument is unnecessary. Thus, the appeal is submitted on the briefs and the record. *See* FED. R. APP. P. 34(a)(2).

TERENCE T. EVANS, *Circuit Judge*

Appeal from the United States District
Court for the Western District of Wisconsin.

No. 08-cv-032-bbc

Barbara B. Crabb,
Chief Judge.

ORDER

Shaheed Madyun, a Wisconsin prisoner, has been engaged in ongoing and disjointed litigation with Kirby Linjer and other prison officials concerning alleged violations of his Eighth Amendment rights. His claims were rejected either at summary judgment or at trial. He now appeals and we affirm.

These proceedings have been protracted. In 2004 Madyun brought a multi-claim suit in federal court in the Eastern District of Wisconsin against Linjer and other officials at three different correctional institutions for, among other things, (1) prolonging his exposure to smoke from a fire set by another inmate in 2001, and (2) assaulting him in a cell in 2002 in order to intimidate him from filing further lawsuits. All claims were ruled on at summary judgment or were dismissed for failure to exhaust administrative remedies. In particular, the court dismissed the assault claim for failure to exhaust administrative remedies and granted the defendants summary judgment on the smoke-exposure claim.

In 2007 Madyun returned to federal court, this time in the Western District of Wisconsin, and filed a

new complaint reviving many of the claims from his previous suit, including both his assault claim and smoke-exposure claim. (Claim preclusion did not apply to the smoke-exposure claim because it was brought against a different defendant.) At screening, the court dismissed a number of defendants, but allowed Madyun to proceed on sixteen different claims against various defendants from three correctional institutions. Following this court's decision in *George v. Smith*, 507 F.3d 605 (7th Cir. 2007), the court later severed these claims into nine separate lawsuits. Of relevance to this appeal, the assault and smoke-exposure claims were consolidated into one suit.

Both claims were ultimately rejected. The district court again dismissed the assault claim because Madyun, as in the 2004 proceedings, failed to exhaust administrative remedies. The smoke-exposure claim was allowed to proceed to trial. In preparation for trial, Madyun sought the issuance of a writ of habeas corpus ad testificandum for inmate Daniel Vanderpool so that Vanderpool could testify about Linjer's actions during the fire, but the court denied the request after Madyun missed his deadline and failed to show that Vanderpool's testimony would be relevant. Madyun tried the smoke-exposure claim, and a jury returned a verdict for Linjer.

On appeal, Madyun first argues that the district court wrongly dismissed his assault claim based on a failure to exhaust administrative remedies. He maintains that the court disregarded administrative complaints and a related administrative appeal that he filed in 2002. As the court noted, however, such evidence was beyond the court's purview because the

court was bound by Judge Griesbach's finding in the 2004 action that Madyun had not shown administrative exhaustion. *Allen v. McCurry*, 449 U.S. 90, 94 (1980); *Perry v. Sheahan*, 222 F.3d 309, 317-18 (7th Cir. 2000). Madyun now points to new administrative complaints he filed in 2006, but–as the court noted–exhaustion requires that any new filings comply with the prison's administrative rules. *Pozo v. McCaughtry*, 286 F.3d 1022, 1025 (7th Cir. 2002); *Woodford v. Ngo*, 548 U.S. 81, 90-93 (2006). Madyun's post-2004 complaints failed to do so because they were not filed within 14 days of the underlying incident, as required by the relevant regulations.

Madyun next argues, regarding the adverse jury verdict on his smoke-exposure claim, that the district court wrongly denied–on relevancy grounds–his petition for a writ of habeas corpus ad testificandum for Vanderpool. Madyun asserts that Vanderpool's testimony was relevant because he proposed to contradict an affidavit from Linjer regarding Linjer's whereabouts during the fire, and thereby cast doubt on Linjer's credibility. But there actually was no conflict in their account of the events; Madyun had simply misread the affidavit provided by Linjer. It is not an abuse of discretion to preclude irrelevant testimony. *See United States v. Pless*, 982 F.2d 1118, 1127-28 (7th Cir. 1992); *Walker v. Sheahan*, 526.F.3d 973, 977-78 (7th Cir. 2008). In addition, to the extent the court also denied the request because it was filed two weeks late, it was not an abuse of discretion to deny the writ as untimely. *ITEL Capital Corp. v. Dennis Mining Supply and Equip., Inc.*, 651 F.2d 405, 407-08 (5th

Cir. 1981) (upholding denial of writ sought three days before trial).

Madyun's third argument is that the district court erred when it severed his 2007 action into nine different actions. He argues that the allegations in each of the severed suits comprised part of a larger conspiracy claim and as such should have been kept together. But we lack jurisdiction to consider this argument. "Post-severance, these suits are independent for purposes of appellate jurisdiction." *Gaffney v. Riverboat Servs. of Ind.*, 451 F.3d 424, 444 (7th Cir. 2006); *United States v. O'Neil*, 709 F.2d 361, 368-70 (5th Cir. 1983). We will not entertain a belated attempt to seek review of a judgment in an unrelated case. *O'Neil*, 709 F.2d at 368-72 (holding that if severances were improper "recourse was to challenge the district court's action on direct appeal or by mandamus" rather than "disregard the district court's action, and then later attempt to attach it in an appeal from another judgment in a different case").

Last, Madyun argues that the district court erred when it dismissed a number of defendants from the 2007 action. But that order was entered before the case was severed and is therefore also not before this court. *Id.*; *Gaffney*, 451 F.3d at 444.

AFFIRMED.

APPENDIX B

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Nos. 06-1310, 08-4003

[Filed September 16, 2009]

By the Court:

SHAHEED TAALIB'DIN MADYUN,
Plaintiff-Appellant,

No. 06-1310 v.

OFFICER LEMON, Correctional,
CAROL COOK, Correctional Officer,
VAL RYAN, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Eastern District of Wisconsin

No. 04 C 343

William C. Griesbach, Judge.

SHAHEED TAALIB'DIN MADYUN,
Plaintiff-Appellant,

No. 08-4003 v.

KIRBY LINJER, Lieutenant,
Defendant-Appellee.

Appeal from the United States District Court for the Western District of Wisconsin

No. 3:08-cv-00032-bbc

Barbara B. Crabb,
Chief Judge

The following is before the court:

1. **NOTICE OF, AND MOTION TO RECALL MANDATE ISSUED ON JULY 24, 2006 IN CASE NO. 06-1310 AFFIRMING THE DISTRICT COURT OF WISCONSIN IN NO. 04-C-343, IN PREVIOUSLY FILED MADYUN V. COOK ET AL**, filed on August 31, 2009, by the pro se appellant.

2. **NOTICE OF, AND MOTION FOR PERMISSION TO AMEND BRIEF APPENDIX WITH DOCUMENTS WITHHELD BY THE PRISON AUTHORITIES ATTEMPTING TO UNDERMINE AN EFFECTIVE BRIEF BEING FILED IN THIS CASE THAT WOULD PROVE**

MISCONDUCT AND BAD FAITH, filed on August 31, 2009, by the pro se appellant.

Upon consideration of the request to recall the mandate, **IT IS ORDERED THAT** the motion is **DENIED**.

Upon consideration of the request to amend the appendix, **IT IS ORDERED THAT** the motion is **DENIED** as unnecessary. The clerk of this court accepted a supplemental appendix for filing on August 31, 2009.

APPENDIX C

UNITED STATES DISTRICT COURT
Western District of Wisconsin

Case No.: 08-cv-032-bbc

[Filed October 23, 2008]

SHAHEED TAALIB'DAN MADYUN,	)
	)
Plaintiff,	)
	)
v.	)
	)
LT. KIRBY LINJER,	)
	)
Defendant.	)
	)

JUDGMENT IN A CIVIL CASE

This action came for consideration before the court with U. S. District Judge Barbara B. Crabb presiding. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

Pursuant to verdict of the jury, this case is dismissed against defendant with prejudice.

JOEL TURNER
Joel Turner, Acting Clerk

/s/ M. Hardin
by Deputy Clerk

10/23/08
Date

APPENDIX D

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WISCONSIN

No. 08-cv-32-bbc

[Filed May 21, 2008]

SHAHEED TAALIB'DIN MADYUN,

Plaintiff,

v.

LT. KUSTER;
LT. KIRBY LINJER; and
JOHN DOE,

Defendants.

ORDER

This is one of six separate lawsuits plaintiff chose to pursue in this court after I determined that his multi-claim, multi-defendant complaint in Madyun v. Muraski, 07-cv-318-bbc, violated Fed. R. Civ. P. 20. In this severed lawsuit, plaintiff is proceeding on the following claims: 1) defendants Kuster, Kirby Linjer and a John Doe officer violated plaintiff's Eighth Amendment rights when they assaulted him

in his cell in February 2002; 2) in June 2001, defendant Kuster violated plaintiff's First Amendment rights by confiscating his watch in retaliation for plaintiff's work as a jailhouse lawyer; and 3) in November 2001, defendant Linjer violated plaintiff's Eighth Amendment rights by prolonging plaintiff's exposure to smoke from a fire another inmate set in plaintiff's unit. Presently before the court is defendants' motion for partial summary judgment, in which defendants contend that plaintiff failed to exhaust his administrative remedies with respect to his claims that defendants Kuster, Linjer and Doe assaulted him and that Kuster confiscated his watch in retaliation for his legal work. Also before the court is plaintiff's April 30, 2008 "Motion Seeking Delay in Ruling on Summary Judgment and Dismissal of Case against Defendant Until All Interrogatories and Discovery Demands Have Been Answered by Defendants" (Dkt. #39), plaintiff's April 30, 2008 "Request to Consider Submitted Exhibits" (Dkt. #40), and plaintiff's May 3, 2008 "Motion in Agreement with Defendants to Allow a Rewrite of the Three Briefs" (Dkt. #42). Because plaintiff's first and last motions each are aimed at delaying resolution of defendants' motion for summary judgment, I will address them together.

In his motion "Seeking Delay in Ruling...", plaintiff asks that the court permit him to submit additional documents in opposition to defendants' motions for summary judgment after he receives responses to interrogatories he sent to defendants on April 8, 2008, and a request for production of documents he sent to defendants on April 14, 2008.

Plaintiff's "Motion in Agreement with Defendants to Allow a Rewrite of the Three Briefs" must be put in context. Defendants have filed motions for summary judgment on the merits of plaintiff's claims in case nos. 07-cv-318-bbc and 08-cv-30-bbc, and motions for summary judgment raising the defense of failure to exhaust in this and three of plaintiff's other pending cases, 08-cv-31-bbc, 08-cv-33-bbc and 08-cv-34-bbc. Plaintiff has taken a scattershot approach to responding to these motions. Instead of limiting his responses to the particular issues before the court in each case, plaintiff has filed a variety of documents bearing the case captions of all six cases, including a 27-page brief in opposition to the several motions for summary judgment in which he jumbles together his arguments relating to each motion. In addition, he has submitted a total of 267 pages of unmarked, unorganized exhibits purportedly supporting his arguments against summary judgment in all of his cases. On May 1, 2008, defendants in case nos. 07-cv-318-bbc, 08-cv-30-bbc and 08-cv-31-bbc (but not in this case or case nos. 08-cv-33-bbc or 08-cv-34-bbc), moved to strike plaintiff's 27-page brief because of its confusing mix of relevant and irrelevant arguments. In his "Motion in Agreement...," plaintiff admits that his submissions are difficult to understand. Thus, he asks for permission to spend another ninety days rewriting his briefs "in order to get it right." Both of plaintiff's requests will be denied.

Plaintiff has had more than ample opportunity to collect and organize documentation of his exhaustion of administrative remedies with respect to the two claims at issue in defendants' motion for summary judgment in this case. Originally, defendants sought

dismissal of plaintiff's unexhausted claims in a motion to dismiss filed on March 5, 2008. On March 7, 2008, I converted the motion to a motion for summary judgment and gave plaintiff until March 21, 2008, in which to oppose it. Later, in response to a motion from plaintiff, I extended his deadline to March 28, 2008. Not utilizing the extension, plaintiff filed his opposing brief, together with an affidavit and 45 pages of documents on March 21, 2008. On April 4, 2008, plaintiff wrote a letter saying he had just received access to additional documents that would help him prove he had exhausted his administrative remedies in this case and in case nos. 08-cv-33-bbc and 08-cv-34-bbc. Curiously, although he asked for permission to submit these documents to the court, plaintiff did not include them with his letter. Nevertheless, in an order dated April 8, 2008, I granted plaintiff's request, telling him he could have until April 18, 2008, in which to submit to the court and counsel for defendants authenticated copies of any additional documents he believed would prove that he had exhausted his administrative remedies. Plaintiff took this opportunity to submit a new 27-page brief (the one defendants ask be stricken in cases other than this one) and another 222 pages of documents, the vast majority of which have nothing to do with this case. Plaintiff's failure to begin discovery sooner and his strategic decision to combine his responses to defendants' motions in documents that are cluttered with irrelevant material will not be rewarded with yet another delay and an opportunity to pile even more documents on the heap of exhibits plaintiff has already provided.

In plaintiff's "Request to Consider Submitted Exhibits" (Dkt. #40), plaintiff acknowledges that in case no 07-cv-318-bbc, the defendants have asked that certain of plaintiff's evidentiary materials (which have been submitted in all of his cases) be ignored because they are unauthenticated. In an effort to cure the defective submissions, plaintiff now has filed an affidavit (Dkt. #41) in which he avers that "all documents submitted by him were exact copies of the original documents on file and in his personal files." In a document titled "Response to Admissibility of Plaintiff's Documents," defendants concede that they have already filed in support of their motion "the vast majority" of the documents plaintiff submitted and, therefore, do not object to the admissibility of those documents. They note, however, that other documents not a part of their earlier submissions are irrelevant to the claims in this case with the possible exception of two documents, a June 4, 2002 letter from plaintiff to Warden Judy Smith and a group offender complaint dated February 13, 2007. For the purpose of deciding defendants' motion for summary judgment, I have excluded from consideration all of plaintiff's submissions that are irrelevant to the issues in this case. Moreover, whether I accept as properly authenticated plaintiff's June 4, 2002 letter to Judy Smith and his February 13, 2007, these documents are insufficient to show that plaintiff exhausted his administrative remedies on the claims at issue in defendants motion. Therefore, I will grant plaintiff's "Request to Consider Submitted Exhibits."

I turn then to defendants' motion for summary judgment. The following facts are drawn from the allegations in plaintiff's complaint and the relevant

exhaustion documents the parties have submitted in connection with the present motion. In addition, I have taken judicial notice of orders entered in the public record of a case plaintiff filed in the Eastern District of Wisconsin, and subsequently appealed to the Court of Appeals for the Seventh Circuit, Madyun v. Lemon, 04-cv-343-WCG.

UNDISPUTED FACTS

Sometime in 2004, plaintiff filed a civil action in the Eastern District of Wisconsin, Madyun v. Lemon, 04-cv-343-WCG, in which he alleged that defendants Linjer and Kuster and a third prison official had beaten him up on February 27, 2002. In an order entered in that case on March 30, 2005, Judge Griesbach held that plaintiff had not exhausted his administrative remedies, 1:04-cv-343-WCG, dkt. #72 (March 30, 2005), aff'd sub nom, Madyun v. Cook, 204 Fed. Appx. 547, 548 2006 WL 2053466, 1 (7th Cir. 2006).

Apparently in response to the dismissal of his appeal in case no. 04-cv-343-WCG, on October 11, 2006, plaintiff filed a new inmate complaint claiming among other things that on February 27, 2002, three officers entered his cell wearing black suits and ski masks and beat him viciously until he pretended to pass out, at which time the officers discussed killing plaintiff and ultimately decided not to do so. On October 12, 2006, plaintiff's complaint was returned to him for his failure to meet the filing requirements for an inmate complaint. In particular, Donna Liebergen, an institution complaint examiner, advised plaintiff

> This complaint is being returned as it contains multiple issues. You mention the incident with staff in a seg cell, lack of medical attention, ICE cover up. You also need to legibly sign complaints using the first and last name you were committed to the department with. If you re-submit this complaint, please clearly specify your one issue and ensure your signature is legible and includes your first and last name. You are also reminded to file within the time limits per DOC 310.

Subsequently, on October 16, 2006, plaintiff received an "ICE Receipt" assigning complaint number GBCI-2006-30524 to his complaint. On October 18, 2008, a Jennifer Delvaux issued a formal "ICE Rejection" of the complaint stating,

> Pursuant to DOC 310.11(5)(d), the "inmate submitted the complaint beyond 14 calendar days from the date of the occurrence giving rise to the complaint and provides no good cause for the ICE to extend the time lines." The complainant lists the date of occurrence as 02/27/02. Complaint also contains multiple issues.

Plaintiff sought review of the rejected complaint on October 18, 2006. A "reviewing authority" acknowledged receipt of plaintiff's appeal on October 23, 2006. On that same day, Warden Judy Smith issues a decision, holding that plaintiff's complaint had been appropriately rejected "in accordance with DOC 310.11(5)."

The Department of Corrections has no record of plaintiff's ever having filed an inmate complaint or appeal concerning his assertion that in June 2001, defendant Kuster confiscated his watch in retaliation for plaintiff's work as a jailhouse lawyer.

OPINION

Under 42 U.S.C. § 1997e(a), a prisoner must exhaust all available administrative remedies before filing a lawsuit in federal court. This means that the prisoner must "properly take each step within the administrative process," Pozo v. McCaughtry, 286 F.3d 1022, 1025 (7th Cir. 2002), which included following instructions for filing the initial grievance, Cannon v. Washington, 418 F.3d 714, 718 (7th Cir. 2005), as well as filing all necessary appeals, Burrell v. Powers, 421 F.3d 282, 284-85 (7th Cir. 2005), "in the place, and at the time, the prison's administrative rules require." Pozo, 286 F.3d at 1025. Thus, if prison officials reject a grievance for failing to comply with a procedural requirement and they decline to address the merits of the grievance, the general rule is that the prisoner has not exhausted his administrative remedies and any lawsuit the prisoner later files must be dismissed. Dixon v. Page, 291 F.3d 485 (7th Cir. 2002); Lewis v. Washington, 300 F.3d 829 (7th Cir. 2002); Pozo, 286 F.3d at 1025. Defendants have the burden to prove that plaintiff failed to comply with § 1997e(a). Jones v. Bock, – U.S. –, 127 S. Ct. 910 (2007).

Wisconsin inmates have access to an administrative grievance system governed by the procedures set out in Wis. Admin. Code §§ DOC 310.01-310.18. Under these provisions, prisoners

start the complaint process by filing an inmate complaint with the institution complaint examiner. An institution complaint examiner may investigate inmate complaints, reject them for failure to meet filing requirements or recommend to the appropriate reviewing authority that they be granted or dismissed. Wis. Admin. Code § DOC 310.07(2). However, if the institution complaint examiner makes a recommendation that the complaint be granted or dismissed on its merits, the appropriate reviewing authority may dismiss, affirm or return the complaint for further investigation. Wis. Admin. Code § DOC 310.12. If an inmate disagrees with the decision of the reviewing authority, he may appeal to a corrections complaint examiner, who is required to conduct additional investigation where appropriate and make a recommendation to the Secretary of the Wisconsin Department of Corrections. Wis. Admin. Code § 310.13. Within ten working days following receipt of the corrections complaint examiner's recommendation, the Secretary must accept the recommendation in whole or with modifications, reject it and make a new decision or return it for further investigation. Wis. Admin. Code § DOC 310.14.

Under some circumstances an inmate complaint may be rejected before it is passed along to a reviewing authority. These include instances in which the complaint is untimely. Wis. Admin. Code § DOC 310.11(5)(d). When an inmate's complaint is rejected, the prisoner may appeal the rejection to the appropriate reviewing authority (usually the warden), who may review only "the basis for the rejection of the complaint." Wis. Admin. Code § DOC 310.11(6). If an inmate appeals the rejection of his

complaint to the warden and the warden agrees that the rejection is inappropriate, the inmate's complaint would be returned to the institution complaint examiner for review on the merits. At that point, the inmate would have to appeal any unfavorable decisions using the procedures described in Wis. Admin. Code § 310 before a federal court could find that he exhausted his administrative remedies.

In determining whether plaintiff exhausted his administrative remedies with respect to his claim that defendants Kuster and Linjer and a John Doe defendant beat him up on February 27, 2002, I must accept as fact that plaintiff did not exhaust his administrative remedies before 2004, when he raised the same claim in Madyun v. Lemon, 04-cv-343-WCG. Judge Griesbach has ruled that plaintiff failed to exhaust his administrative remedies on this claim before he filed his 2004 action, and the court of appeals has agreed with this determination. Those determinations cannot be relitigated in this case. Meyer v. Rigdon, 36 F.3d 1375, 1379 (7th Cir. 1994) (issue preclusion applies when same party lost on same issue in previous case). In one of his multiple supplements to this brief, dkt. #28, plaintiff argues that Judge Griesbach's decision has no effect on this case because the case in the Eastern District was dismissed "because [plaintiff] misidentified his exhibits." This is a brazen misrepresentation of Judge Griesbach's decision in which he painstakingly considered each of the documents that plaintiff submitted to show administrative exhaustion. At the conclusion of this discussion, the court stated that "there is no evidence that Madyun exhausted his administrative procedures." Madyun v. Lemon, No. 04-C-343 (Order dated December 27,

2005). Thus, the only question before this court with respect to plaintiff's first claim is whether he exhausted his administrative remedies sometime after 2004. I conclude he did not.

Plaintiff's 2006 inmate complaint was rejected as untimely. When plaintiff appealed the rejection to the warden, the warden upheld the institution complaint examiner's action. Plaintiff has pointed to no evidence in the record to show that he presented his claim in the place, at the time, and in the manner the prison's administrative rules require. Therefore, defendants have met their burden to show that plaintiff failed to exhaust his administrative remedies with respect to his claim that defendants Kuster and Linjer and a John Doe beat him up on February 28, 2002. The claim will be dismissed without prejudice to plaintiff's refiling it at a later time if he succeeds in properly presenting the claim through the administrative grievance process. (Although it appears highly unlikely that plaintiff will be able to complete the grievance process at this late date, dismissals for failure to exhaust are always without prejudice. Ford v. Johnson, 362 F.3d 395, 401 (7th Cir. 2004).)

Also, with respect to plaintiff's retaliation claim against defendant Kuster, defendants have been unable to find any record of plaintiff's having raised this claim in a properly filed grievance and plaintiff has not provided evidence that he did. Indeed, plaintiff does not argue in his brief that defendants are mistaken on this point. Therefore I conclude that this claim, too, must be dismissed without prejudice.

ORDER

IT IS ORDERED that

1. Plaintiff's "Motion Seeking Delay in Ruling on Summary Judgment and Dismissal of Case against Defendant Until All Interrogatories and Discovery Demands Have Been Answered by Defendants" (Dkt. #39) is DENIED.

2. Plaintiff's "Motion in Agreement with Defendants to Allow a Rewrite of the Three Briefs (Dkt. #42) is DENIED.

3. Plaintiff's "Request to Consider Submitted Exhibits" (Dkt. #40) is GRANTED.

4. Defendants' motion for partial summary judgment is GRANTED. Plaintiff's claims that defendants Kuster, Kirby Linjer and a John Doe officer violated plaintiff's Eighth Amendment rights when they assaulted him in his cell in February 2002 and that in June 2001, defendant Kuster violated plaintiff's First Amendment rights by confiscating his watch in retaliation for plaintiff's work as a jailhouse lawyer are DISMISSED without prejudice for plaintiff's failure to exhaust his administrative remedies.

5. This action is DISMISSED as to defendant Lt. Kuster and John Doe.

Entered this 21st day of May, 2008.

BY THE COURT:

/s/
BARBARA B. CRABB
District Judge

APPENDIX E

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

Case No. 04-C-343

[Filed December 27, 2005]

SHAHEED TAALIB'DIN MADYUN, et al.,	)
	)
Plaintiffs,	)
	)
v.	)
	)
LEMON, et al.,	)
	)
Defendants.	)
	)

DECISION AND ORDER

In an order dated March 30, 2005, I granted the defendants' motion for summary judgment as to most of the plaintiffs' claims because such claims had not been exhausted via the complaint and appeals process of the Oshkosh Correctional Institution, the prison where Madyun was serving his sentence. Three claims remain outstanding and will be addressed herein. First, in the March 30 decision I withheld ruling on Madyun's seventh claim because the documentary evidence did not clearly show, either way, whether he had exhausted

that claim. Second, Madyun's ninth claim, which involved smoke in his room, was not at issue in the March 30 decision because the state conceded it had been exhausted. Third, Claim 11 on behalf of Madyun and inmate Larry Kiser was dismissed only as to Madyun as it appeared Kiser had exhausted his remedies. In addition, Madyun filed a motion for reconsideration of my dismissal of his eighth claim, claiming that evidence in the record supports a finding that he exhausted that claim. Based on the evidence now submitted in the present motion for summary judgment, I conclude that all three of the remaining claims should be dismissed and that the motion for reconsideration should be denied.

1. Claim 7

Claim 7 alleged conspiracy, retaliation and cruel and unusual punishment. Among other things, Madyun claimed several guards dressed in black entered his room and beat him one night, all in an effort to get him to stop his lawsuits against them. In the March 31, 2005 order, I concluded that an inmate complaint filed by Madyun (Exhibit 39) could constitute evidence of the exhaustion of his remedies: "Exhibit 39, however, is an inmate complaint that does seem to recite many of the same facts as Claim 7 of the complaint."[†] I also found that exhibit 40, which was a March 12, 2002 letter from Warden Judy Smith, could constitute evidence of a response to Madyun's request for review of the ICE's rejection of his complaint (Exhibit 39). Exhibit 39 is indeed very similar to the claim alleged in this case

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[†] The exhibits referred to are Madyun's own exhibits, at docket #66, which he filed on January 3, 2005.

and could be based on the same conduct. The question, however, is whether Madyun appealed the decision rejecting his complaint, which is part of the exhaustion process. *See, e.g., Gidarisingh v. McCaughtry*, 2005 WL 2428155, *9 (E.D. Wis. 2005). My earlier decision left open the possibility that Exhibit 40–the letter from Smith–was evidence of Madyun's appeal. It is now clear, however, the Exhibit 40 is actually a response to other, unrelated, correspondence from Madyun dating back to February 26, 2002, and thus it is *not* a response to Exhibit 39, his prisoner complaint. (DPFOF ¶¶ 26-28; Smith Aff., Ex. B.) For instance, Exhibit 40 refers to "your letter concerning your allegations of due process allegations," (sic) whereas Exhibit 39 was a prisoner complaint, not a letter. Nor did it cite any "due process" violations (at least in the segment provided in Madyun's exhibits). Moreover, Exhibit 40 makes reference to a case numbered 02-CV-00043-C, filed in the Western District, which is something that is *not* found referenced in Exhibit 39. Instead, the reference to case 02-CV-00043-C shows up in Madyun's unrelated February 26 letter. Based on these inconsistencies, it would make no sense to construe Exhibit 40 as being a response to Exhibit 39.

Madyun's only response to this is that the March 12 letter (Exhibit 40) *must* have been a response to his appeal because he received an identical letter from Smith dated March 8. (Madyun Aff., Docket #91, at 12.) Why would she write two identical letters, he asks? The only explanation, in his view, is that the one of the letters was actually directed at the issues involved in claim 7. But this argument cannot escape the same issues noted earlier. Both

letters address case 02-CV-00043-C, which was not raised as an issue in his inmate complaint (Exhibit 39). Both refer to a "letter" rather than a complaint. Accordingly, neither of the letters can be construed as having anything to do with the issues raised by claim 7.

Without Exhibit 40, Madyun has no evidence that he ever appealed the rejection of his complaint. As I noted in my previous order, "[A] prisoner who does not properly take each step within the administrative process has failed to exhaust state remedies, and thus is foreclosed by § 1997e(a) from litigating." *Pozo v. McCaughtry*, 286 F. 3d 1022, 1024 (7th Cir. 2002). "To exhaust remedies, a prisoner must file complaints and appeals in the place, and at the time, the prisons' administrative rules require." *Id.* at 1025. The prison also has no record of any appeal. (Second Smith Aff., ¶ 8.) Accordingly, because there is no evidence that Madyun exhausted his administrative procedures, § 1997(e) bars further consideration of claim 7.

2. Claim 9

What remains of Claim 9 involves Madyun's allegation that an inmate near his cell started a fire and that the prison guards took over forty-five minutes to respond. This delayed response, which continued for a total of two hours, was an intentional effort to expose Madyun to the smoke, the denouement of the guards' scheme to "commit murder with the false justification that Madyun died of natural causes." (Compl. ¶ 125.) The claim is brought against defendants Kuster, Jones and

Smith, although nowhere in the complaint does Madyun explain their involvement.

The complaint was silent on their involvement, and so are his present efforts. His response brief merely relies on my screening order as if that order had decided that they *were* responsible. That is not the case. Instead, it was Madyun's responsibility to come forward with evidence showing how each defendant is involved in the alleged constitutional violation, especially when the claim is so implausible on its face. Each of the three defendants states that they were not even at the prison at the time of the fire Madyun alleges, and it is therefore undisputed that their involvement is nil. Accordingly, summary judgment on claim 9 is appropriately granted in the defendants' favor.

3. Claim 11

Madyun and plaintiff Larry Kiser were initially allowed to proceed on Claim 11 which alleged that their Eighth Amendment rights were violated when defendants Kaplan, Keller, Schwochert, Smith, Pierce and Schroeder "flooded the vents with gas in an attempt to cause death, or other permanent harm to the inmates." (May 17, 2004 Order at 15.) In my March 30, 2005 order I granted the defendants' motion to dismiss Madyun's claim for failure to exhaust, but concluded that Kiser's claim remained because he had exhausted his administrative remedies. Defendants now seek summary judgment on Kiser's claim on the ground that there is no evidence to support it.

In their proposed findings of fact they point out that an addition to the Segregation Unit was under construction at the time in question and construction-related fumes and odors came into the building through the air handlers on occasion. The fumes were mild, however, and staff who worked closer to the site than inmates did not even notice them. Had they been aware of a problem with fumes, staff would have started a hallway fan which would have solved the problem. Moreover, none of the inmates complained until Kiser filed his complaint and he never sought medical treatment for it. (DPFOF ¶¶ 29-35.) These facts are uncontested. Although Kiser filed an affidavit supporting Madyun's version of claim 7, he has not responded to the defendants evidence that claim 11 is without support. Accordingly, summary judgment will be granted as to this claim also.

4. Motion for Reconsideration

Madyun has also filed a motion for reconsideration of my dismissal of his eighth claim, in which he alleged a conspiracy to confine him illegally, fraud, falsification of records, etc. The claim was dismissed for failure to exhaust, by Madyun now claims that I should reconsider the dismissal because he inadvertently failed to cite evidence that he actually did exhaust these claims. The evidence he now points to consists of a series of rambling inmate complaints that show, at best, he may have exhausted the rev ew process regarding the prison's failure to timely count for a check he received in the mail. The prison's failure to immediately put the funds in his account, he alleged, caused him to be written up because he later attempted to make

purchases at the canteen while having no funds in his account.

Upon review, it does appear that Madyun has exhausted at least part of his eighth claim, namely, the part set forth in paragraph 103 of his complaint. But now that the matter has been clarified by the documents he has cited, it is evident that the underlying claim failed as a matter of law from the outset. The gist of his claim is that the prison had a duty to deposit funds from a check he received into his account as soon as the check arrived in the mail. To do otherwise, he claims, was fraud and, assuredly, part of some larger conspiracy to prevent him from buying stamps, which in turn stifled his litigation efforts. What happened here was that Madyun received a receipt for a check on a Thursday, but Liz Lemery "postdated" the check to indicate it was received on the following Monday. (See Pltf. Ex. 57e-58.) The postdating occurs because the prison does not post funds on Fridays and its "bank" is closed on weekends. From these facts, I simply cannot discern any Constitutional violation. Indeed a two-business-day delay in the availability of funds is the sort of experience that individuals outside of prisons encounter on a daily basis. Madyun appears to allege, of course, that the prison's stated reasons for all of this are a sham, but that is not supported by anything in the record or in the evidence he cites. The facts simply do not make out a violation of the Constitution. Accordingly, the claim, inasmuch as it was exhausted, is dismissed on its merits for failure to state a claim upon which relief may be granted. To the extent the motion for reconsideration seeks injunctive relief, it is denied for the same reasons.

In conclusion, the plaintiffs' motions are denied, the defendants' motion for summary judgment is granted as to all claims, and the case is dismissed.

SO ORDERED this 27th day of December, 2005.

/s/ William C. Griesbach
WILLIAM C. GRIESBACH
United States District Judge

APPENDIX F

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

Case No. 04-C-343

[Filed November 29, 2004]

SHAHEED TAALIB'DIN MADYUN, et. al., Plaintiff,	)
v.	)
LEMON, et al., Defendant.	)

ORDER

Plaintiffs Shaheed Taalib'din Madyun, Larry Kiser and Betty Lou Madyun, appearing pro se, filed this action on April 7, 2003, alleging violations of their civil rights pursuant to 42 U.S.C. §§ 1983 and 1985. Shaheed Madyun and Kiser are serving state sentences at Green Bay Correctional Institution. Betty Lou Madyun is Shaheed Madyun's wife, but she is not a prisoner. In their voluminous complaint, the plaintiffs asserted twelve separate causes of action and, after this court's screening of the complaint pursuant to 28 U.S.C. § 1915(a), were allowed to proceed on ten of the original claims.

Currently before me is the defendant's motion for partial dismissal pursuant to Fed. R. Civ. P. 12(b)(6). The defendants' argue that all but one of Shaheed Madyun's claims should be dismissed on the ground that he has failed to exhaust his administrative remedies. Defendants also seek dismissal of Count 10 of the complaint, which asserts an Eighth Amendment claim of cruel and unusual punishment on behalf of Betty Lou Madyun. Defendants contend that because Betty Lou is not a prisoner serving a sentence, the Eighth Amendment does not apply.

A motion to dismiss under Rule 12(b)(6) challenges the sufficiency of the complaint to state a claim upon which relief may be granted. *See* Fed. R. Civ. P. 12(b)(6). The essence of a Rule 12(b)(6) motion is not that the plaintiff has pleaded insufficient facts; it is that even assuming all of his facts are accurate, he has no legal claim. *Payton v. Rush-Presbyterian-St. Luke's Med. Ctr.*, 184 F.3d 623, 627 (7th Cir. 1999). Dismissal of an action under such a motion is warranted if the plaintiff can prove no set of facts in support of his claims that would entitle him to relief. *Scott v. City of Chicago*, 195 F.3d 950, 951 (7th Cir. 1999); *see Conley v. Gibson*, 355 U.S. 41, 45-46 (1957).

Defendants' motion as to Betty Lou Madyun's Eighth Amendment claim will be granted to the extent that count 10 asserts an Eighth Amendment claim. Because it is clear from the complaint that Betty Lou is not a prisoner, the Eighth Amendment does not apply. *Whitley v. Albers*, 475 U.S. 312, 318-19 (1986); *Kinney v. Indiana Youth Center*, 950 F.2d 462, 465 (7th Cir. 1991). Thus, that portion of Count 10 asserting such a claim must be dismissed. But I

decline to dismiss Ms. Madyun's claim in its entirety. Count 10 incorporates paragraph 112 of the complaint, which alleges that Betty Lou Madyun:

> wrote a letter to the warden on what she personally observed was physically done to her husband Mr. Shaheed Taalib'din Madyun; she described the busted wrists and asked warden Judy Smith to do something about the violent action of Staff. Keller and Kuster decided to punish Mrs. Madyun by twisting the words of her letter and attributing them to being coerced by Mr. Shaheed Madyun; using her letter to justify punishing her husband; after the letter incident she was repeatedly harassed by officers; they placed her life in danger by attempting to cause her to have a heart attack.

(Compl. ¶112.) Paragraph 126 alleges that this conduct "violated Mrs. Betty Lou Madyun's Eighth Amendment rights to be free from cruel and unusual punishment." As noted above, the fact that Betty Lou is not a prisoner precludes application of the Eighth Amendment. But I am unable to say that based upon the allegations in paragraph 112, Betty Lou has no claim against the defendants she has named. The allegation that she was repeatedly harassed by the officers name in Count 10 and that they placed her life in danger by attempting to cause her to have a heart attack, while vague and indefinite as to the time, place and manner in which this attempt was allegedly made, is sufficient to state a claim under the liberal pleading rules that apply in federal courts, especially for pro se litigants. *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972);

Walker v. Thompson, 288 F.3d 1005, 1007 (7th Cir. 2002). Accepting the allegation as true, which I am required to do at this stage of the proceeding, Ms. Madyun might have a due process claim or perhaps a state law claim for intentional infliction of emotional distress over which the court might have supplemental jurisdiction. For this reason, I decline to dismiss Count 10 in its entirety.

As for defendants' argument that all but one of Madyun's claims should be dismissed for failure to exhaust, I conclude that the resolution of this issue would require consideration of facts that are outside the scope of the pleadings and, for this reason, defendants' motion to dismiss cannot be granted. Although Fed. R. Civ. P. 12(b) authorizes the court to treat a motion to dismiss under that Rule as a motion for summary judgment pursuant to Fed. R. Civ. P. 56 when matters outside the pleadings are considered, I am unable to proceed in that fashion at this time because of the confused state of Madyun's response. I will therefore allow him a further opportunity to respond.

There is no dispute that both Madyun (from now on, this means Shaheed) and Larry Kiser, as state prisoners under sentence for criminal conduct, were required to exhaust their administrative remedies within the prison system before bringing suit in federal court under § 1983. 42 U.S.C. § 1997e(a); *Perez v. Wisconsin Dept. of Corrections*, 182 F.3d 532, 537 (7th Cir. 1999). The defendants request that I take judicial notice of the numerous Offender Complaints that plaintiffs filed pursuant to the Inmate Review System, Wis. Admin. Code. Ch. DOC 310, for the six year period preceding the filing of

this action. (The statue of limitations for an action on § 1983 is six years. *Gray v. Lacke*, 885 F.2d 399, 409 (7th Cir. 1989).) They then argue that the absence of Offender Complaints corresponding to each of the claims set forth in the complaint establishes plaintiffs' failure to exhaust. Because the only count that corresponds to one of the Offender Complaints filed by Madyun is count 9, defendants conclude he failed to exhaust as to the remaining claims and they must be dismissed. (Def.'s Br. At 4.)

But aside from the uncertainty as to whether Offender Complaints are the kinds of documents that may be judicially noticed, see Fed. R. Evid. 201, the complaints only show what Madyun did file. The crucial fact upon which defendants' motion is based is that Madyun filed no other complaints. To determine this fact, however, I must go outside the records themselves. In addition, exhaustion is required only where administrative remedies are available. *Johnson v. Litscher*, 260 F.3d 826, 829 (7th Cir. 2001) ("For the exhaustion requirement to apply, there must be some administrative remedy to exhaust."). Madyun claims that he was prevented from filing inmate complaints by some of the defendants, thereby making the administrative remedy unavailable. Furthermore, an inmate is deemed to have exhausted his administrative remedy "when the time limits for the prison's response set forth in the prison Grievance Procedures have expired." *Underwood v. Wilson*, 151 F.3d 292, 295 (5th Cir. 1998). *See also Lewis v. Washington*, 300 F.3d 829, 833 (7th Cir. 2002) (adopting same). Madyun claims that as to some of his grievances, the prison administration failed to respond within the time allowed, thereby rendering

the administrative remedy "unavailable" as these claims also. Finally, and somewhat inconsistently with his claim that defendants prevented him from filing, Madyun goes on to claim that in fact he did file grievances and has submitted a fifteen-page "Offer of Proof Concerning Exhaustion" to which is attached some two hundred pages of unmarked exhibits to establish just that fact.

Thus, Madyun claims that he has exhausted his administrative remedies. The problem with Madyun's response, however, is that his allegation that he was prevented from filing Offender Complaints by the conduct of one of one of the defendants appears in the body of a brief, as opposed to an affidavit or declaration, and he does not adequately identify the documents that he claims show that he did in fact exhaust his administrative remedies or that the prison failed to respond to his complaint in a timely manner. Referring to documents as "(Complaint dated 4/18/04); Conduct Report #1311435, Conduct Report #1395503 and complaint OSCI-2001-29764; Complaint dated 01/07/02; and Complaint CCI-2001-5275; Complaint dated 04/14/02; Complaint OSCI-2001-11357" (Pl.'s Br. In Opp. at 15-16) is not sufficient when the record contains over two hundred unmarked and unnumbered pages. "Judges are not like pigs, hunting for truffles buried in briefs." *United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991).

I conclude that defendants' motion to dismiss should be treated as a motion for partial summary judgment as to eight of the remaining claims on the ground that the inmate plaintiffs have failed to exhaust their administrative remedies as they were

required to do under 42 U.S.C. § 1997e. To avoid dismissal, Madyun and Liser must file a response that sets forth as to each claim at issue, in affidavit form, the evidence that supports their contention that they did in fact exhaust their administrative remedies or why they are excused from doing so. Documents upon which they rely and to which they refer must be separately marked as exhibits and clearly identified. Plaintiffs may also file a brief in support of their position, but their response should be limited to the issue of exhaustion; the merits of the claims may not be addressed until the question of exhaustion has been resolved. The additional summary judgment procedures set out in Civil L.R. 56.2 shall not apply, but the plaintiffs are hereby put on notice that failure to specifically respond to defendants' evidentiary showing may result in dismissal of the eight claims at issue.

IT IS THEREFORE ORDERED that defendants' motion to dismiss is granted in part. Any Eighth Amendment claim on behalf of Betty Lou Madyun is dismissed for failure to state a claim upon which relief may be granted. That portion of the motion seeking dismissal of eight of the remaining counts for failure to exhaust administrative remedies is converted to a motion for summary judgment pursuant to Fed. R. Civ. P. 56. A copy of Rule 56 shall be attached to this order for Madyun's and Kiser's information. Madyun and Kiser shall file a response to defendants' motion in accordance with the directions set forth above on or before January 3, 2005. Defendants shall file their reply on or before January 23, 2005.

Dated this 29th day of November, 2004.

/s/ William C. Griesbach
William C. Griesbach
United States District Judge

APPENDIX G

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

No. 08-4003

[Filed December 15, 2009]

SHAHEED TAALIB'DIN MADYUN,
Plaintiff-Appellant,

v.

KIRBY LINJER, Lieutenant,
Defendant-Appellee.

Before

FRANK H. EASTERBROOK, *Chief Judge*
RICHARD A. POSNER, *Circuit Judge*
TERENCE T. EVANS, *Circuit Judge*

Appeal from the United States District Court for the Western District of Wisconsin

No. 08 C 32

Barbara B. Crabb, *Chief Judge*

ORDER

On October 28, 2009, the plaintiff-appellant filed a petition for rehearing and petition for rehearing en banc. All the judges on the panel have voted to deny a rehearing, and none of the judges in active service have requested a vote on the petition for rehearing en banc. The petitions for rehearing and rehearing en banc are therefore DENIED.

APPENDIX H

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WISCONSIN

No. 07-C-318-C

[Filed December 28, 2007]

SHAHEED TAALIB'DIN MADYUN,

Plaintiff,

v.

KENNETH KELLER; ANGIE WOOD; LT. KUSTER; LT. KIRBY LINJER; CO. II CAROL COOK; PETER ERICKSON; CAPT. BRANT; LT. LAMBRECHT; WILLIAM POLLARD; DR. STEVEN SCHMIDT; CAPT. BRUCE MURASKI; PHIL KINGSTON; DON STRAHOTA; CAPT. O'DONOVAN; SGT. VOSS; SGT. LEHMAN; SIEDSCHLAG; and CAPT. WIERENGA,

Defendants.

ORDER

Plaintiff is proceeding in this case on the following claims:

1. In June 2001, while plaintiff was confined at the Oshkosh Correctional Institution, defendant Kuster confiscated plaintiff's watch in retaliation for plaintiff's work as a jailhouse lawyer and his complaints about prison conditions.

2. In September 2001, also while plaintiff was confined at the Oshkosh Correctional Institution, defendant Carol Cook put "medicine or poison" in plaintiff's food in violation of his Eighth Amendment rights. In March 2002, defendant Cook violated plaintiff's Eighth Amendment rights again when she put handcuffs on plaintiff so tightly that it caused his wrists to bleed and when she refused to seek medical treatment for him. Cook's March 2002 actions also violated plaintiff's right of access to the courts because they were taken to retaliate against plaintiff for his jailhouse lawyering activities.

3. Also in September 2001, defendant Angie Wood put plaintiff in segregation in retaliation for his activities as a jailhouse lawyer and because of his complaints about prison conditions. This same defendant violated plaintiff's Eighth Amendment rights in October 2001, when she failed to obtain medical care for plaintiff after learning the plaintiff had ingested pieces of razor blades that had been hidden in a piece of pie.

4. In November 2001, defendant Linjer violated plaintiff's Eighth Amendment rights by prolonging his exposure to smoke from a fire another inmate set in plaintiff's unit.

5. In February 2002, defendants Kuster, Kirby Linjer and a John Doe officer violated plaintiff's

Eighth Amendment rights when they assaulted plaintiff in his cell.

6. In March 2002, defendants Linjer and Kuster and defendant Kenneth Keller issued a conduct report against plaintiff and sentenced him to segregation because of his activities as a jailhouse lawyer and his complaints about prison conditions.

7. In June 2002, shortly after plaintiff was transferred to the Green Bay Correctional Institution, defendant Peter Erickson put plaintiff in segregation because of plaintiff's activities as a jailhouse lawyer and complaints about prison conditions.

8. Sometime in late 2005 or early 2006, also while plaintiff was confined at the Green Bay Correctional Institution, defendants William Pollard and Peter Erickson violated plaintiff's Eighth Amendment rights by inducing him to experience symptoms of a heart attack.

9. In September 2005, defendants Erickson and Capt. Brant issued conduct reports to plaintiff and defendant Lt. Lambrecht placed plaintiff in segregation for "Enterprising and Fraud" and "Unauthorized Transfer of Property" in retaliation for plaintiff's activities as a jailhouse lawyer and his complaints about prison conditions.

10. In 2005 and 2006, defendants William Pollard, Peter Erickson and Steven Schmidt conspired to send plaintiff to segregation because of plaintiff's activities as a jailhouse lawyer and his complaints about prison conditions.

11. Sometime in late 2006, after plaintiff had been transferred to the Waupun Correctional Institution, defendants Bruce Muraski, Don Strahota, Captain Wierenga, Sergeant Voss and Captain O'Donovan conspired to place plaintiff in segregation because of his activities as a jailhouse lawyer and his complaints about prison conditions. In addition, defendant Muraski ordered officers to destroy plaintiff's legal materials and personal documents because of plaintiff's lawyering activities.

12. Also in late 2006, defendants Captain Wierenga, Sergeant Lehman, Don Strahota and Phil Kingston denied plaintiff his religious and legal materials because he is a Muslim and a jailhouse lawyer.

13. Sometime after January 16, 2007, defendant Siedschlag refused to advance plaintiff through the segregation step program and denied him access to the law library because of plaintiff's activities as a jailhouse lawyer and his complaints about prison conditions.

Defendants have answered the complaint and a preliminary pretrial conference was held on October 23, 2007, before Magistrate Judge Stephen Crocker. At that time, the magistrate judge set a schedule for moving this case to resolution. Now, however, I must stay the proceedings, because a recent ruling of the Court of Appeals for the Seventh Circuit requires me to sever the majority of plaintiff's claims into separate lawsuits, and plaintiff will have to choose which of the separately identified lawsuits he wishes to prosecute under the case number assigned to this action.

In George v. Smith, --- F.3d ---, No. 07-1325 (7th Cir. Nov. 9, 2007) (copy attached), the court of appeals ruled that a prisoner may not "dodge" the fee payment or three strikes provisions in the Prison Litigation Reform Act by filing unrelated claims against different defendants in one lawsuit. Rather, district courts must sever unrelated claims against different defendants or set of defendants and require that the claims be brought in separate lawsuits. The court reminded district courts that Fed. R. Civ. P. 20 applies as much to prisoner cases as it does to any other case.

Fed. R. Civ. P. 20(a) governs the number of parties a plaintiff may join in any one action. It provides that a plaintiff may sue more than one defendant when his injuries arise out of "the same transaction, occurrence, or series of transactions or occurrences" and when there is "any question of law or fact common to all defendants." Thus, multiple defendants may not be joined in a single action unless the plaintiff asserts at least one claim to relief against each of them that arises out of the same transaction or occurrence or series of transactions or occurrences and presents questions of law or fact common to all. Id.; 3A Moore's Federal Practice ¶ 20.06, at 2036-2045 (2d ed. 1978). If the requirements for joinder of parties have been satisfied under Rule 20, only then may Fed. R. Civ. P. 18 be used to allow the plaintiff to join as many other claims as the plaintiff has against the multiple defendants or any combination of them, even though the additional claims do not involve common questions of law or fact and arise from unrelated transactions. Intercon Research Assn., Ltd. v. Dresser Ind., Inc., 696 F.2d 53, 57 (7th Cir. 1983)

(quoting 7 Charles Alan Wright et al., Federal Practice & Procedure).

In applying Rule 20 to this case, I conclude that plaintiff's complaint must be divided into nine separate lawsuits. These actions are not properly heard together in a single lawsuit under Rule 20 because they do not arise out of the same transaction occurrence, or series of transactions and occurrences. Plaintiff's unsupported belief that most if not all of the defendants were motivated to act against him because of his legal activities is not enough to transform the separate acts of the defendants into a "series of transactions or occurrences." Plaintiff is contending that a total of eighteen different individuals at three different institutions did different things to him at different times over a six-year period. The acts range from the trivial (confiscation of plaintiff's watch) to shockingly serious (putting poison in plaintiff's food and refusing him medical attention after he ingested slivered pieces of razor blades). For each act, plaintiff will have to prove that the act actually occurred and that the intent of the individual in committing the act was to punish plaintiff for engaging in legal activities. This will require plaintiff to conduct discovery specific to the separate incidents and the motivation of the separate individuals and to seek out witnesses specific to the individual events.

The central purpose of Rule 20 is to enable economies in litigation, such as trial convenience and timely resolution of disputes. Elmore v. Henderson, 227 F.3d 1009, 1012 (7th Cir. 2000); Mosley v. General Motors Corp., 497 F.2d 1330, 1332 (8th Cir.

1974). The Federal Rules, however, and the Prison Litigation Reform Act, recognize countervailing considerations to judicial economy. Rule 42(b), for example, provides for separate trials where the efficiency of a consolidated trial is outweighed by its potential prejudice to the litigants. Fed. R. Civ. P. 42(b); Grayson v. Kmart Corp., 79 F.3d 1086, 1097 (11th Cir. 1996). In addition, as recognized in George v. Smith, the Prison Litigation Reform Act's filing fee requirements are circumvented when prisoners are allowed to include a plethora of separate, independent claims in one lawsuit.

Here, not even considerations of convenience and expedited dispute resolution militate in favor of allowing plaintiff to proceed in one lawsuit with all of his claims. Indeed, severance of plaintiff's claims will further the aims of the PLRA and fairness. Although there may be a common question of law presented, there are no common questions of fact at issue. As noted above, proof of wrongdoing will be unique to each specific incident. Moreover, it seems likely that the defendants would suffer some prejudice if the claims are heard together. The likelihood of juror confusion if this case were tried as a whole is great in light of the large number of persons involved and the different incidents being contested. Some defendants may suffer prejudice if the jury concludes that other defendants, on different dates, acted in a manner that violated any of plaintiff's rights. In sum, plaintiff's claims are appropriately severed under Rules 20 and 18 as set forth below.

In what I swill call Lawsuit #1, plaintiff may litigate his claim that defendant Carol Cook put

"medicine or poison" in plaintiff's food in September 2001 in violation of his Eighth Amendment rights. In this same lawsuit, plaintiff litigate his claims that in March 2002, defendant Cook violated his Eighth Amendment rights and retaliated against him for exercising his right of access to the courts when she put handcuffs on plaintiff so tightly that it caused his wrists to bleed and when she refused to seek medical treatment for him.

In what I will call Lawsuit #2, plaintiff may litigate his claim that in September 2001, defendant Angie Wood put plaintiff in segregation in retaliation for his activities as a jailhouse lawyer and because of his complaints about prison conditions. In addition, plaintiff may litigate his claim that Wood violated plaintiff's Eighth Amendment rights in October 2001, when she failed to obtain medical care for plaintiff after learning the plaintiff had ingested pieces of razor blades that had been hidden in a piece of pie.

In what I will call Lawsuit #3, plaintiff may litigate his claim that defendants Kuster, Kirby Linjer and a John Doe officer violated plaintiff's Eighth Amendment rights when they assaulted plaintiff in his cell in February 2002.

In what I will call Lawsuit #4, plaintiff may litigate his claim that in March 200, defendants Linjer, Kuster and Kenneth Keller issued a conduct report against plaintiff and sentenced him to segregation because of his activities as a jailhouse lawyer and his complaints about prison conditions.

Under Fed. R. Civ. P. 18, plaintiff may add to either Lawsuit #3 or Lawsuit #4 his claim that in November 2001, defendant Linjer violated his Eighth Amendment rights by prolonging his exposure to smoke from a fire another inmate set in plaintiff's unit. In addition, he may add to either Lawsuit #3 or Lawsuit #4 his claim that in June 2001, defendant Kuster confiscated his watch in retaliation for plaintiff's work as a jailhouse lawyer and his complaints about prison conditions.

In what I will call lawsuit #5, plaintiff may litigate his claim that defendants William Pollard, Peter Erickson and Steven Schmidt conspired to send him to segregation in 2005 and 2006 because of his activities as a jailhouse lawyer and his complaints about prison conditions. In this same lawsuit, plaintiff may litigate his claim that sometime in late 2005 or early 2006, defendants Pollard and Erickson violated his Eighth Amendment rights by inducing him to experience symptoms of a heart attack. Finally, plaintiff may include in Lawsuit #5 his claim that in June 2002, defendant Erickson put plaintiff in segregation because of plaintiff's activities as a jailhouse lawyer and his complaints about prison conditions.

In what I will call Lawsuit #6, plaintiff may litigate his claim that in September 2005, defendants Erickson, Capt. Brant and Lt. Lambrecht issued conduct reports to plaintiff and placed him in segregation for "Enterprising and Fraud" and "Unauthorized Transfer of Property" in retaliation for plaintiff's activities as a jailhouse lawyer and his complaints about prison conditions.

In what I will call Lawsuit #7, plaintiff may litigate his claim that sometime in late 2006, after plaintiff had been transferred to the Waupun Correctional Institution, defendants Bruce Muraski, Don Strahota, Captain Wierenga, Sergeant Voss and Captain O'Donovan conspired to place plaintiff in segregation because of his activities as a jailhouse lawyer and his complaints about prison conditions. In addition, plaintiff may litigate his claim that defendant Muraski ordered officers to destroy plaintiff's legal materials and personal documents because of plaintiff's lawyering activities.

In what I will call Lawsuit #8, plaintiff may litigate his claim that in late 2006, defendants Captain Wierenga, Sergeant Lehman, Don Strahota and Phil Kingston denied plaintiff his religious and legal materials because he is a Muslim and a jailhouse lawyer.

Finally, in what I will call Lawsuit #9, plaintiff may litigate his claim that sometime after January 16, 2007, defendant Siedschlag refused to advance plaintiff through the segregation step program and denied him access to the law library because of plaintiff's activities as a jailhouse lawyer and his complaints about prison conditions.

In light of George, I may apply the filing fee plaintiff paid in this case to only one of the nine lawsuits I have identified above. Plaintiff will have to choose which lawsuit that is. That lawsuit will be the only lawsuit assigned to this case number.

As for the other lawsuits, plaintiff has a more difficult choice. He may choose to pursue each

lawsuit separately. However, because he has struck out under § 1915(g), he will have to pay the full filing fee before he may proceed further with any one of them. Alternatively, plaintiff may choose to dismiss any or all of his remaining lawsuits voluntarily. If he chooses this latter route, plaintiff will not owe additional filing fees. Any lawsuit dismissed voluntarily would be dismissed without prejudice, so plaintiff would be able to bring it at another time.

I understand that it is not normally the case that a lawsuit may be withdrawn without prejudice when a case has progressed as far as this one has. However, in light of the unanticipated and far-reaching effect of the George decision on existing prisoner litigation. I intend to permit prisoner litigants in cases pending in this court at the time the George opinion was issued to dismiss without prejudice the separate lawsuits within their original complaint that have been identified as requiring severance.

ORDER

IT IS ORDERED that

1. Plaintiff may have until January 20, 2008, in which to identify for the court and defendants the separately numbered lawsuit identified in the body of this opinion on which he wishes to proceed under the number assigned to this case. As to this one lawsuit, plaintiff's filing fee payment will be applied.

2. Plaintiff may have until January 20, 2008, in which to advise the court which of the remaining

separately numbered lawsuits he will prosecute, if any, and which he will withdraw voluntarily.

3. For any lawsuit that plaintiff dismisses voluntarily, he will not owe a filing fee.

4. For any lawsuit that plaintiff advised the court he intends to prosecute, (other than the one plaintiff chooses to keep assigned to this case number) plaintiff will owe a separate $350 filing fee, which he must pay in full no later than January 17, 2008. The payment(s) may be submitted by a check or money order made payable to the clerk of court.

5. If, by January 20, 2008, plaintiff fails to respond to this order, I will enter an order dismissing the lawsuit as it presently exists with prejudice for plaintiff's failure to prosecute.

6. All proceedings are STAYED in this case pending plaintiff's response to this order.

Entered this 27th day of December, 2007.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge

APPENDIX I

Clerk's Office U.S. Court of Appeals
For the 7th Circuit
219 South Dearborn Street
Chicago, Illinois 60604

December 1, 2009

Re: Madyun v. Linjer, 08-4003.

Dear Clerk:

On October 24, 2009, I mailed a petition for rehearing En Banc in the above numbered case seeking consideration of this Court's October 9, 2009 decision by the three-judge panel to affirm the district court's dismissal of my civil rights suit. As of this date I have not been informed if the court will grant my petition or not, and I am on the 90 day time limit to file a Writ of Certiorari in the United States Supreme Court.

This letter is to ask the status of the reconsideration of the October 9, 2009, decision and whether the En Banc petition will be granted. Also, it is to ask if that motion stays the 90 days I have in which to file the Certiorari in the Supreme Court? I need to know these facts. Because if it does not stay the 90 days, I want to immediately file my writ with the Supreme court. Please get back to me on these important questions. Thank you.

Sincerely,
/s/Shaheed Madyun #75225
Pro Se Litigant.

APPENDIX J

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
219 South Dearborn Street
Chicago, Illinois 60604

12/4/09

Shaheed Taalib'din Madyun
#75225
WAUPUN CORRECTIONAL INSTITUTION
P.O. Box 351
Waupun, WI 53963-0000

Re: 08-4003, Taalib'din Madyun v. Linjer

Dear Mr. Taalib'din Madyun,

Your petition for rehearing is still pending. If the court denies your rehearing, you have 90 days from the date of that decision to file your Writ of Certiorari.

Sincerely,

Pro Se Clerk